

HOUSE BILL 38

By Todd

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 1, relative to department of revenue  
guidance.

WHEREAS, the General Assembly has enacted laws to provide revenue for the funding  
of State and local governments; and

WHEREAS, it is the duty of the commissioner of revenue to administer many of these  
laws; and

WHEREAS, in order to properly administer these laws, the commissioner of revenue  
must communicate guidance to taxpayers; and

WHEREAS, the General Assembly wants to foster an environment in which the  
commissioner of revenue can effectively communicate such guidance, and taxpayers will be  
confident in relying upon such guidance; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-1-108, is amended by deleting the  
section in its entirety and substituting instead the following:

(a) It is the commissioner's duty to implement and enforce the laws administered  
by the commissioner under this or any other title. The commissioner shall enforce these  
laws in a manner consistent with all applicable statutes, rules, and regulations. When  
the commissioner publishes guidance regarding the taxability of any privilege, affected  
taxpayers are entitled to rely on the guidance. If the commissioner changes the  
guidance, then a taxpayer who relied on the guidance before it was changed is not liable  
for any assessment of additional tax, interest, or penalty that accrued before the

guidance was changed and was unpaid because of the taxpayer's reasonable reliance upon the guidance.

(b) If a taxpayer is either audited by the department or requests specific advice from the department and receives erroneous audit findings or advice, then the taxpayer is not liable for any assessment of additional tax, interest, or penalty attributable to the erroneous finding or advice furnished by the department, to the extent the following conditions are all satisfied:

(1) The finding or advice was reasonably relied upon by the taxpayer. In determining whether the reliance was reasonable, the taxpayer is deemed to be aware of any changes in applicable law that occurred after the finding or advice was furnished by the department;

(2) The additional assessment did not result from the taxpayer's failure to provide adequate or accurate information; and

(3) The department provided the finding or advice to the taxpayer in writing or the department's records establish that the department provided erroneous verbal advice to the taxpayer. In furtherance of this condition, the department shall adopt formal audit procedures to allow taxpayers the right to memorialize audit findings in the final audit document prepared by the audit division upon completion of the audit.

(c) If the commissioner changes the policy of the department as to the taxability of any privilege, then the policy change must be applied to the exercise of those privileges occurring after the date of the policy change only, unless otherwise provided by law.

(d) The commissioner is encouraged to continue providing and publishing guidance and advice to taxpayers to assist with compliance with this state's tax statutes.

Except as specifically provided in this section, the issuance of guidance, advice, or audit findings by the commissioner does not constitute new or revised enforcement of the law.

(e) This section is intended only to prevent audit assessments against taxpayers that reasonably relied upon guidance, advice, or prior findings communicated to the taxpayer by the department. Such guidance, advice, or findings do not have the force and effect of law and do not independently establish a basis for a claim for refund under § 67-1-1802. Any claim for refund must be based on applicable statutes, rules, and regulations.

(f) The department shall designate as public guidance applicable, published manuals, notices, and statements.

(g) As used in this section:

(1) "Audit finding" or "finding":

(A) Means the specific conclusions contained in the final document written by the audit division or hearing office and presented to the taxpayer upon completion of an audit or an informal conference conducted to review an audit;

(B) Includes findings memorialized in the final document written by the audit division pursuant to the procedures established under subdivision (b)(3); and

(C) Does not include the issuance of a license, certificate, or application approval;

(2) "Published" means displayed on the department's website; and

(3) "Published guidance" or "guidance":

(A) Means tax manuals, important notices, statements presented in a question-and-answer format, or other substantive statements

regarding the taxability of a privilege that are published on the department's website; and

(B) Does not include verbal comments from an auditor or letter rulings or revenue rulings, as described in § 67-1-109, that are redacted and placed on the department's website.

SECTION 2. This act takes effect July 1, 2021, the public welfare requiring it.